

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13660 of the Republic of Chad, as amended, pursuant to Article 46 of the Zoning Regulations, for approval under Section 4603 to use the subject premises as a Chancery and under Paragraph 8207.11 of the Zoning Regulations, for a variance from the requirement that required parking spaces be accessible at all times directly from streets or alleys (Sub-section 7206.4) in a D/R-5-B District at the premises 2002 R Street, N.W., (Square 93, Lot 21).

HEARING DATE: November 23, 1981

DECISION DATES: January 6 and 27, 1982

FINDINGS OF FACT:

1. The subject site is located on the south side of R Street between 21st Street and Connecticut Avenue and is known as premises 2002 R Street, N.W. It is in a D/R-5-B District.

2. The site is located in the Dupont Circle area. It is approximately 100 feet west of Connecticut Avenue. The site is at the eastern edge of an area, extending two blocks west to near Florida Avenue, two blocks south to near Massachusetts Avenue, and one block north, predominantly developed around the turn of the century with large row dwellings. Many of these row dwellings have since been converted to apartments. Some others, scattered throughout the area, are used as offices, art galleries, and chanceries. East of the property is the commercial corridor along Connecticut Avenue. Immediately adjoining the property on that side is a seven-story office building, 1660 Connecticut Avenue.

3. The site has access to Hillyer Place and 21st Street via a fifteen foot wide alley. R Street is one-way westbound and has two-hour parking on both sides. On the south side, parking is not permitted during the rush hours. This block of R Street is not contained in the residential parking program.

4. The site is in a D/R-5-B zone district, the eastern boundary of which is the east lot line of the site. This zoning extends west and south for two blocks, and north for one block. East of the property is C-3-B zoning along Connecticut Avenue. The use provisions of both the D

District and the underlying R-5-B District apply to the site.

5. The subject property is adjoined on both sides by non-residential uses. On the east side of the premises is located the Mutual of Omaha Building and on the west side is located an art gallery, trading under the name of "Arthur Charles Gallery." Directly across from the subject property on R Street is a commercial building in the C-3-B district.

6. The subject site measures approximately 1,889 square feet in area. It is improved with a three story and basement building which has a rear porch, patio area and two parking spaces off the alley. The property is currently vacant. There was some testimony at the public hearing that the site had previously been used for office use but that basically the site has been used for residential purposes.

7. The application does not propose to use the entire building for chancery use. Only the three stories above ground are intended for such use. The basement, which has no direct access to the upper floors, is intended as a guest-quarters for infrequent diplomatic visits from officials from the Republic of Chad. The applicant argued that the total number of square feet of gross floor area which is proposed for chancery use is 2,268 square feet.

8. The question of how to apportion space in a building devoted to chancery use for the purpose of computing the required number of parking spaces was determined by the Board in Application No. 12826 of the Royal Kingdom of Saudia Arabia. In its order dated November 9, 1978, Finding of Fact No. 11, the Board stated that "where a country has its embassy and its chancery in two separate, distinct buildings that the gross floor area of its chancery building shall include the total amount of space in the building used by the government, including all supportive and accessory uses." In the subject application, the Board finds that the total gross floor area of the building is 3,024 square feet, and that all of that area must be included in computing the required number of parking spaces.

9. The chanceries of the Republic of Malawi and the Republic of Tanzania, are located one block away from the subject property on R Street, between 21st and 22nd Streets, with numerous other chanceries located within three to four blocks of the property.

10. The architectural design of the building is consistent with the character of the row dwellings in this area, but is obviously out of character with the adjacent Mutual of Omaha Building. No exterior alterations to the front of the building are planned and so the appearance of

this block will not be altered. The location of parking spaces off the alley to the rear is a typical arrangement in this area.

11. The structure conforms to all the height, area, bulk and placement requirements of the R-5-B District. The applicant's architect testified to these facts and the Board so finds.

12. The chancery expects to employ only three or four persons and to utilize a maximum of three vehicles in the service of the chancery. The chancery further expects few visits on a typical working day.

13. The application proposes four parking spaces to be located on the subject property. To accommodate these spaces, the applicant proposes to alter the patio and demolish a rear addition to the building. There is a slight cut-out of approximately four feet at the southeast corner of this lot, which is owned by the adjoining property owner. Of the four parking spaces, three would be nine feet by nineteen feet and one sixteen feet by nineteen feet.

14. Due to the four foot cut-out at the southeast corner of the subject property and the narrow width of the lot, the applicant is not able to provide sufficient on-site parking spaces which are immediately adjacent to a means of ingress and egress.

15. The applicant is required by Paragraph 4603.25 to provide on-site parking at the rate of one space for every eight hundred square feet of gross floor area devoted to chancery use. Thus, the applicant is required to provide four parking spaces. The applicant's proposal to provide four parking spaces on the site with the dimensions described above, satisfies the requirements of Paragraph 4603.25.

16. At the public hearing the applicant sought and was granted permission by the Board to amend its application to seek a variance from the provisions of Sub-section 7206.4 of the Regulations to allow stacked parking on the subject property.

17. The subject property is within two blocks of the Dupont Circle Metrorail station and one hundred feet of an arterial street, Connecticut Avenue, which has substantial bus service. There are many public parking facilities in the area.

18. The Office of Planning and Development, by report dated November 18, 1981 and by testimony at the public hearing recommended that the application be approved subject to the applicant's obtaining a minimum of two additional

parking spaces off-site in the vicinity for the exclusive use of the chancery's employees and visitors. Since the application was amended at the public hearing to include the subject parking variance, the OPD did not make a recommendation on the variance. The OPD in its report found that the architectural design and the arrangement of all structures and of off-street parking spaces are in keeping with the character of the neighborhood. The OPD reported that the building meets the height of building, floor area ratio, percentage of lot occupancy, yard and court requirements. The OPD found that the use will not create dangerous or other objectionable traffic conditions. The OPD further reported that Sub-section 4602.1 of the Zoning Regulations states that the D Overlay District is to be mapped "at suitable locations in implementation of the Foreign Missions Element." The subject site meets all of the specific criteria contained in that Plan Element for siting individual chanceries. One important criterion is that the site be "in close proximity to arterial streets in which existing Chanceries, Chancery Annexes, and Combined Chanceries/Embassies are located". The subject site is 100 feet from Connecticut Avenue and less than one-quarter mile from Massachusetts Avenue, both of which are major arterials with chanceries. Another criterion is that the site "be served by public transit (Metrobus and/or Metrorail) to reduce parking requirements." As stated earlier, the site is two blocks from a Metrorail station and in an area served by numerous bus routes. The OPD further noted that impact upon neighboring properties is of major concern in granting an application for chancery use in an area with an underlying residential zone district. This site is at the edge, rather than in the midst, of a residential district. It is not adjoined by any residential use, except perhaps residential use of an upper floor of the art gallery adjoining the property on the west. Across R Street is a commercial building in the C-3-B Zone District. Due to the proximity to Connecticut Avenue, there would be minimal traffic circulation interference with other uses on this block of R Street. The Board concurs in the OPD report.

19. The NCPC by report dated November 5, 1981 and by testimony at the public hearing, recommended that the application be approved. The NCPC reported that the proposed Chancery for the Republic of Chad is located in an area depicted on the "Foreign Missions and International Agencies" diagram of the Comprehensive Plan for the National Capital approved for new chancery locations. In addition, this proposal is consistent with other sections of this element such as the Goal, the Objectives and two specific criteria of the Plan that foreign missions should give preference to locations in designated historic districts and be served by public transit to reduce parking requirements. The proposed Chancery is within the Dupont Circle Historic District and is approximately one block from the north

entrance of the Dupont Circle Metrorail Station. In addition, numerous bus lines conveniently serve this area. The Board so finds.

20. The U.S. Department of State by letter of November 17, 1981 and through testimony at the public hearing recommended that this application be approved. The State Department reported that approval of the application would allow the Government of Chad to establish a permanent location for its chancery in the District of Columbia. The Government of Chad, through its counsel, has been in contact with the Department of State regarding the proposed purchase. The Department understands that no additions or alterations are planned to the exterior of the structure on the property. Furthermore, the State Department believes the application filed on September 21, 1981 complies with the comprehensive plan of the National Capital Planning Commission and is within the Zoning Regulations of the District of Columbia. The Board so finds.

21. The lessee of premises at 2006 R Street testified that he is a lessee and been operating a museum on his premises since September 1980. He had no objection to the application as long as the chancery will provide parking on site. He testified that the subject premises has been vacant for some time and it is his belief that since it will be occupied and maintained, it will be more satisfactory to the neighborhood.

22. An owner and resident of property at 2011 R Street which is the first residence across from the subject property, by letter of October 29, 1981 and by testimony at the public hearing opposed the application on the following grounds:

- a. The R Street block between Connecticut Avenue and 21st Street, N.W. cannot tolerate another non-residential use. Although R-5-B is a residential district, other permitted uses, such as doctors' offices and galleries, have entered the street to a degree that any further encroachment could destroy the integrity of the basic zone and destroy entirely the residential environment the property owners have invested so much time, money and effort to preserve.
- b. The parking situation on R Street is already bad, if not impossible. To invite a group of diplomats, allegedly scofflaws, to add to the extreme parking problem would be abusive of the rights of those persons who live there.
- c. Chad is allied with the terrorist run country of Libya. Thus it is quite possible that the

Chad Chancery, wherever located, will create more than the usual risk associated with a chancery. For that reason, it should not be permitted in a residential area. It should be diverted to an area of offices where it will not create a clear and present danger of interference with the entitlement of residents to peaceful enjoyment of their private homes.

- d. There is nothing peculiar about the 2002 R Street property which creates a hardship which might justify a variance or the exercise of discretion in favor of the application. There is no evidence from the pattern of recent sales of property in the block, or otherwise in the neighborhood to indicate that an economic hardship exists requiring a variance from the permitted uses of the property in the neighborhood. The property could clearly be sold by the current non-resident owners at far more than their investment to persons willing to live in it as is required by the zoning laws. The desire of the owners to sell it to Chad in order to make a quick gross profit is not sufficient basis, if indeed it is any basis at all, for destroying the neighborhood

23. Advisory Neighborhood Commission 2B, by letter of November 18, 1981, through testimony at the public hearing and by posthearing memorandum of January 25, 1982 recommended that the application be denied. In its initial submission, the ANC had argued that the two parking spaces the proposed Chancery was providing was inadequate. The inadequate parking constituted four of the five reasons the ANC opposed the application. In summary, the ANC opposed the application as amended on the following grounds:

- a. The premises are located on a densely structured residential block served by a twelve foot alley that must meet all service needs of the residences on the block, such as garbage, trash, utility and repair vehicles as well as access for service vehicles to and from the two, seven story office buildings at the east end of the block. Access to the alley is available only from Hillyer Place and 21st Street, both of which are one-way streets. A chancery office, which by definition is intended to serve consular needs and requires accessibility to visitors, is unsuitable for such a location; conversely, such an office cannot work effectively subject to the limitations of the area.

- b. The applicant intends to use the entire premises for Chancery purposes, trying to avoid the parking requirements of the Regulations by treating one of four floors as guest quarters. Chad's attempted reclassification of part of the use is merely a guise to evade the parking requirements of the Regulations.
- c. The three parking spaces proposed would not meet zoning requirements if they were legal. Four are required for the total square footage of the Chad use. A variance to permit even three parking spaces is not justified by applicant. A variance, ipso facto, raises a question whether the use can be found "not incompatible". The testimony is uncontradicted that the twelve foot alley, needed for vital neighborhood services in a very compact, congested square, would have to be used to permit vehicle maneuvering necessary for ingress and egress to the otherwise inaccessible parking spaces, contrary to the needs of the neighborhood for unobstructed use of the alley. None of the other properties on the square so use their lots or the alley. There is no evidence from DOT directly or through OPD on the alley problem, nor any clearance from the Fire Department.
- d. The only arguments that Chancery use is "not incompatible" are (i) the existence of a Commercial District adjacent to the property, and (ii) the presence of two chanceries further west on R Street. The latter are outside the ANC, are across the historic Florida Avenue D.C. boundary, are in a different zoning district, and are in less compact, less congested squares, with different density characteristics. The former represents a decision by the Zoning Commission in a very recent case as to where the Commercial District should be and where it should stop; it provides no basis for "compatibility", but rather, the contrary, for it would permit "domino" conversion of the neighborhood.
- e. Testimony of a representative neighborhood resident-owner amplifying the ANC's official neighborhood opposition illustrated further particulars of neighborhood incompatibility.

24. The Board is required by statute to give great weight to the issues and concerns of the ANC. In addressing these concerns, and the opposition recited in Finding No 22,

the Board finds that the applicant is providing the number of parking spaces required under the Zoning Regulations and that four spaces are sufficient to meet the needs of the applicant. The question as to the number of parking spaces required is addressed in Finding of Fact No. 8. The variance request is not directed to the number of requested parking spaces but to their access. The application to establish the chancery use is brought under Section 4603, not as a use variance. The test is not one of hardship as suggested by the opposition. In the subject D/R-5-B District, a chancery is a permitted use provided the use is not incompatible with the present and proposed development of the neighborhood. The applicant has no burden to prove that the subject structure cannot be used for residential purposes. The Board further finds that the applicant cannot be held responsible for all the ills indigenous to residing in the Dupont Circle area such as traffic, smaller alleys and parking problems. The Board also finds that the subject use is a low keyed operation based on the few staff persons, potential visitors to the site, the size of the Republic of Chad and the size of the structure which limits its use and which size dictates the number of required parking spaces. The Board does not find, contrary to the assertions of the ANC and the opposition, that the proposed use will exacerbate to any appreciable degree the traffic and parking problems of the subject neighborhood. As to item "d" of the ANC's opposition, the Board has not limited itself to the existence of a commercial district adjacent to the property and the presence of two other chanceries in addressing the issues of compatibility. The Board has addressed itself to the review standards of Section 4603 of the Zoning Regulations from Sub-section 4603.2 through 4603.28. The Board further notes that the fact that an ANC boundary line divides an area does not preclude the Board from taking note of actual conditions in the area. The Board further points out that a Department of Transportation report or a clearance from the Fire Department is not required under Section 4603. As to item "c" in Finding 22, the Board finds these allegations as speculative and not relevant to any decision the Board must make. The Board further finds that the subject site is served adequately by bus service, Metrorail and public parking facilities.

25. There is a letter in the record from Advisory Neighborhood Commission 1D, the nearest boundary of which is a block and a half to the west. The ANC opposed the application on the grounds that its area would be adversely impacted. The ANC provided no evidence of what such impacts would be or how they would actually affect the area. As set forth earlier, the Board finds no basis of significant or substantial evidence to deny the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant seeks to establish a Chancery under Section 4603 of the Zoning Regulations and variance relief from Sub-section 7206.4. The Board, to grant the relief under Section 4603, requires substantial evidence that the applicant has complied with all the requirements. The Board concludes that the applicant has met the burden of proof as evidenced in Findings No. 10, 11, 15, and 17. The Board notes further the support of the application by the Office of Planning and Development, the National Capital Planning Commission and the Department of State.

As to the variance relief the Board concludes the applicant is seeking an area variance the granting of which requires proof of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property. The Board further must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, and purpose and integrity of the zone plan. As found in Finding No. 13, there is a four foot cut-out at the southeast corner of the rear of the site. The applicant is unable to design sufficient on-site parking spaces which are immediately adjacent to a means of ingress and egress. The Board concludes that the practical difficulty is inherent in the property. The Board in granting the variance can eliminate some of the concerns expressed by the opposition as to the difficulty in finding on-street parking in the immediate neighborhood. The Board is also of the opinion that the stacked parking as arranged by the applicant would create little interference with the traffic in the alley to the rear of the site. The Board further concludes that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

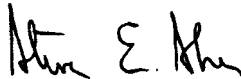
The Board concludes that it has accorded "great weight" to the issues and concerns of the ANC.

Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the CONDITION that the use of the subject property is restricted to the Republic of Chad.

VOTE: 4-1 (Connie Fortune, William F. McIntosh, and Charles R. Norris to grant, Walter B. Lewis to grant by proxy; Douglas J. Patton opposed).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: APR 14 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.